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Attorneys for the Union, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL NO. 5

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

UNITED FOOD COMMERCIAL WORKERS  
LOCAL 5 (SAFEWAY STORES),

and

CHRISTOPHER RATANA-KELLEY, an  
Individual.

Case 32-CB-219981

**RESPONSE TO GENERAL  
COUNSEL'S PARTIAL JOINDER TO  
CHARGING PARTY'S MOTION TO  
STRIKE ANSWER AND  
AFFIRMATIVE DEFENSES**

The General Counsel has inappropriately joined in the Motion of the Charging Party. The Motion of the Charging Party was to strike the entire Answer. The Motion did not seek to strike any particular Affirmative Defense. The "Partial Joinder" filed by Counsel for the General Counsel thus attempts to join in a motion that was not made and is not pending before the Administrative Law Judge.

Nonetheless, we make the following points. First, Mr. Solem has not yet entered a formal appearance nor identified himself as an attorney. Until he does that, there remains a question about whether he is an authorized representative of the Charging Party or anyone else.

Second, the Administrative Law Judge should enter an appropriate order that Federal Express, which is a notorious violator of the Act, should not be used to serve documents in this case. We withdraw the affirmative defense on the use of Federal Express but seek an order of the ALJ to prohibit the use of that entity.

Finally, although we generally recognize that any person, no matter how ill-informed, misguided, venal or corrupt, may file a charge. Nonetheless, the circumstances are different here. Respondent asserts that Mr. Christopher Ratana-Kelley did not file the charge because he wanted to. He did so because he was forced to do it by his parents. He has no interest in pursuing this except for the fact that he has been directed to do so. That's a different situation.

The Second Affirmative Defense goes to the issue of whether Mr. Ratana-Kelley really wants to pursue this case or whether he was forced to do so over his objection.

Process cannot be served if a charge and a Complaint is issued based upon a Charging Party who doesn't wish to proceed and is only forced to do so by outside forces and pressures.

For these reasons, the Counsel for General Counsel's Partial Joinder should be denied.

Dated: June 5, 2019

Organize and Resist,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for the Union, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL 5

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## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On June 5, 2019, I served the following documents in the manner described below:

### **RESPONSE TO GENERAL COUNSEL'S PARTIAL JOINDER TO CHARGING PARTY'S MOTION TO STRIKE ANSWER AND AFFIRMATIVE DEFENSES**

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Aaron B. Solem  
8001 Braddock Road, Suite 600  
Springfield, VA 22160  
[abs@nrtw.org](mailto:abs@nrtw.org)

Tracy Clark  
National Labor Relations Board, Region 32  
Field Examiner  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224  
[tracy.clark@nlrb.gov](mailto:tracy.clark@nlrb.gov)

- ☒ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

On the following part(ies) in this action:

Christopher Ratana-Kelley  
1601 Colchester Street  
Danville, CA 94506

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 5, 2019, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler